IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 8845 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

RAMAN KOIJI VASAVA

Appearance:

1. Criminal Misc.Application No. 8845 of 2001

PUBLIC PROSECUTOR for Petitioner No. 1

MR SUTHAR for MR NK MAJMUDAR for Respondent No. 1-7

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 03/04/2002

ORAL JUDGEMENT

The State of Gujarat has filed this application against the impugned judgment and order dated 5.10.2001

passed by the learned Additional Sessions Judge, Vadodara below Ex.1 in Criminal Misc. Application No.787/02 filed by respondent-accused whereby the learned Judge allowed the application for regular bail and ordered to release the respondent-accused on bail on certain terms and conditions mentioned in the order.

Learned APP Shri Kodekar for the applicant-State vehemently submitted that the learned Judge was wrong in holding that the presence of the applicant-accused was doubtful. He also submitted that the learned Judge has also erred in holding that there was no evidence to show that the accused were members of unlawful assembly and there is a possibility of their names being falsely involved by the opposition group and under the circumstances when weapons like sticks and stones were recovered from them, then it cannot be said that they took part in commission of offence. Mr.Kodekar, learned APP, therefore, submitted that the bail granted in favour of the respondents should be cancelled and the impugned order passed by the learned judge be quashed and set aside.

As against that learned counsel Shri Suthar appearing for Mr.Majmudar submitted that when the learned Judge has given clear cut finding that the presence of the accused at the time of incident was found to be doubtful and the possibility of their names falsely involved in the matter later on because of the rivalry between two groups, then this court should not interfere with such discretionary order of bail when only sticks were recovered from the accused.

It is true that in the instant case, weapons like sticks and stones have been used by accused, but the learned Judge ought to have seen that one person has lost his life and two persons were seriously injured and their names are disclosed and accordingly, offence like 302 and 307 of IPC and, therefore, the learned Judge should have been slow in releasing the accused on bail. Mr.Kodekar, learned APP was fully justified in submitting that at this stage it was premature for the learned Judge to come to the conclusion that the presence of the accused at the time of scene of offence was doubtful. Similarly, learned Judge was not right in coming to the conclusion that the fact of implicating the names falsely in the matter because of rivalry between two groups cannot be ruled out. In the same manner, the learned Judge was wrong in observing at this stage that there is no evidence against the accused that they were members of the unlawful assembly.

It would have been better if the learned Judge had not expressed his opinion while releasing the accused on bail because it is a matter of evidence. It goes without saying that the learned Judge who is going to try the case shall not be influenced by any observations made by the learned Additional Sessions Judge, Vadodara while releasing the respondent-accused on bail as he is bound to decide the matter after appreciating the evidence which is led before him.

Under the circumstances, it cannot be said that the learned Additional Sessions Judge was justified in releasing the respondent-accused on bail by giving such reasons stated hereinabove. If this was the only material on record, then this court would have definitely interfered with the order and cancelled the bail granted in favour of the respondent-accused but considering the other material on record and the manner in which the incident has taken place way back on 1.8.2001 and that they are on bail since 5.10.2001 and that there is no interim order passed by this court on the application for cancellation of bail while admitting the same, therefore, I do not want to interfere with the order of granting bail to the respondent-accused.

In view of the above discussion, this petition fails and is dismissed. Rule discharged.

(B.J.Shethna, J.)

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